

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Mercedes Bayon	Team: Squad #13	CCRB Case #: 201409661	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 09/16/2014 7:00 PM	Location of Incident: § 87(2)(b)	Precinct: 42	18 Mo. SOL 3/16/2016	EO SOL 3/16/2016	
Date/Time CV Reported Fri, 09/19/2014 4:42 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 09/19/2014 4:42 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Nanhao Chen	04985	944428	042 PCT
2. POM Jorge Minier	02770	949340	042 PCT
3. CPT Osvaldo Nunez	00000	918086	042 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Thomas Rao	19420	947382	042 PCT
2. POM John Hernandez	22889	952844	042 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jorge Minier	Abuse: PO Jorge Minier entered and searched § 87(2)(b) in the Bronx.	
B.SGT Nanhao Chen	Abuse: Sgt. Nanhao Chen threatened to arrest § 87(2)(b)	
C.SGT Nanhao Chen	Discourtesy: Sgt. Nanhao Chen spoke rudely to § 87(2)(b)	
D.CPT Osvaldo Nunez	Abuse: Capt. Osvaldo Nunez interfered with § 87(2)(b) and § 87(2)(b)'s ability to photograph an incident.	
E.CPT Osvaldo Nunez	Abuse: Capt. Osvaldo Nunez threatened to arrest § 87(2)(b) and § 87(2)(b)	
F.POM Jorge Minier	Force: PO Jorge Minier used physical force against § 87(2)(b)	

Case Summary

On September 16, 2014, at approximately 7:00 p.m., § 87(2)(b) (encl. 5a-5e) was inside of her home located at § 87(2)(b) in the Bronx. § 87(2)(b) was in her home with her boyfriend, § 87(2)(b) her sister, § 87(2)(b) and her neighbor, § 87(2)(b). At some point, § 87(2)(b) ran into § 87(2)(b)'s apartment. § 87(2)(b) is a friend of § 87(2)(b)'s son, § 87(2)(b). § 87(2)(b) told § 87(2)(b) that § 87(2)(b) was being beaten up by unknown males. Shortly thereafter, police officers broke through the apartment door and entered stating that they were looking for a gun (**Allegation A**). § 87(2)(b) did not know who specifically broke the door but stated that approximately 4 or 5 officers entered. She identified one of these officers as "PO Cheng," identified by the CCRB as Sgt. Nanhao Chen. § 87(2)(b) described that there was a Hispanic male officer in uniform who was wearing a white shirt, identified by the CCRB as Capt. Osvaldo Nunez, and a third officer who was possibly Dominican, identified by the CCRB as PO Jorge Minier. All of the officers were assigned to the 42nd Precinct. When the officers entered § 87(2)(b)'s apartment, § 87(2)(b) and § 87(2)(b) asked the officers to see a copy of the search warrant, but none of the officers responded. The officers searched her bedroom and looked underneath her bed and in her closet (**Allegation A**). § 87(2)(b) again asked to see a search warrant and asked what was occurring. Sgt. Chen allegedly responded, "She will be going to Central Booking," or "You will be going to jail" (**Allegation B**). § 87(2)(b) was screaming and crying by this point in the incident and Sgt. Chen allegedly told her to "Shut the fuck up" (**Allegation C**). Following this, § 87(2)(b) was placed in handcuffs. During the entry, § 87(2)(b) and § 87(2)(b) were standing at the front door of the apartment taking photographs of the officers and of the damage to the door. Capt. Nunez allegedly told them to stop taking photographs or he was going to arrest them (**Allegation D and E**). § 87(2)(b) sat on the ground in the living room in handcuffs, and § 87(2)(b) was then pushed by PO Jorge Minier, placed in handcuffs, and seated on the ground next to § 87(2)(b) (**Allegation F**). Only § 87(2)(b) was arrested and removed from the apartment.

This case was reassigned from Investigator Olubukola Ajayi to Investigator Ben Gilmore on January 9, 2015. § 87(2)(g) On March 24, 2013 the case was reassigned from Investigator Gilmore to Investigator Mercedes Bayon. § 87(2)(g)

Contact Attempts to Additional Civilians (encl. 16a-1)

§ 87(2)(b) missed two scheduled interviews without calling to cancel or reschedule.

On October 14, 2014, Intake Investigator Shuster contacted § 87(2)(b) who stated that he did not wish to participate with the investigation and declined to provide a statement.

With regard to § 87(2)(b) and § 87(2)(b) on November 17, 2014, a Lexis Nexis search for additional contact information returned negative results. A please call letter was sent to both § 87(2)(b) and § 87(2)(b). The letter to § 87(2)(b) returned "unable to forward." § 87(2)(b) contacted the CCRB on January 15, 2015 and provided a telephone number at which she could be contacted. On February 6, 2015, Investigator Gilmore called § 87(2)(b) and it was determined that the telephone number was disconnected. Upon reassignment, the undersigned investigator mailed letters to all aforementioned civilians; however, none of them contacted the CCRB.

Mediation, Civil, and Criminal Conviction Histories

This case is not mediation eligible as it resulted in the arrest of § 87(2)(b). A Notice of Claim inquiry was submitted and will be included in the case file upon receipt.

A search for criminal conviction histories for § 87(2)(b) and § 87(2)(b) returned negative results.

The case regarding § 87(2)(b)'s arrest for this incident remains open (encl. 16). § 87(2)(b) does not have any previous criminal convictions.

Civilian and Officer CCRB Histories

This is the first complaint filed by § 87(2)(b) and the first complaint in which § 87(2)(b) and § 87(2)(b) have been party (encl. 1e-1h).

Capt. Nunez has been a member of service for 18 years and has 19 previous CCRB cases involving 55 allegations. In CCRB case number 200100569 a force allegation was substantiated against Capt. Nunez in which the CCRB recommended charges and the final disposition was not guilty. This is the fifth time a threat of arrest allegation has been made against Capt. Nunez (encl. 1-1b).

Sgt. Chen has been a member of service for seven years and has three complaints against him involving four allegations, none of which were substantiated. § 87(2)(g) (encl. 1d).

PO Minier has been a member of service for four years, and has five previous CCRB complaints against him involving 12 allegations, none of which were substantiated. § 87(2)(g) (encl. 1c).

Findings and Recommendations

Allegations Not Pleaded

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

The property damage allegation is subsumed under the entry and search allegation.

Explanation of Subject Officer Identification

The entry and search allegation has been pleaded against PO Minier because he testified that he followed § 87(2)(b) and stated that he was the officer who was given permission to enter the apartment.

§ 87(2)(b) identified Sgt. Chen by name during her interview and alleged that he used discourteous language towards her and threatened to arrest her. § 87(2)(g)

§ 87(2)(b) also alleged that an officer wearing a white uniform shirt threatened to arrest § 87(2)(b) and § 87(2)(b) and told them to stop taking photographs. Capt. Nunez was the only officer wearing a white uniform shirt that was present at the time of the incident. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) alleged that a Hispanic male officer who initially entered the apartment and who she believed was possibly Dominican because he spoke Spanish, pushed § 87(2)(b) PO Minier was identified as the Hispanic male officer who is Dominican and while he did not recall speaking Spanish he stated that he does speak Spanish. § 87(2)(g)

Recommendations

Allegation A: Abuse of Authority: PO Jorge Minier entered and searched § 87(2)(b) in the Bronx.

It is undisputed that Capt. Nunez and officers entered and searched § 87(2)(b). However, the circumstances that led the officers to § 87(2)(b) how they gained entry, and the extent of the search remain in question. According to § 87(2)(b) (encl. 5a-5e), as she was in her home with several individuals, § 87(2)(b) ran into her apartment and told her that § 87(2)(b) was getting beaten up by a group of males. Shortly thereafter, police officers allegedly broke the door in and entered her apartment stating that they were looking for a gun. § 87(2)(b) stated that approximately four or five officers entered her apartment including Sgt. Chen, Capt. Nunez, and PO Minier. During § 87(2)(b)'s telephone statement (encl. 4a), he stated that he heard banging on the apartment door and when he approached to open the door, several officers broke the door and entered the apartment.

According to PO Minier (encl. 7d-f), as he responded to a shots fired call at East 169th Street and Boston Road, he observed several civilians fleeing the scene including one male, § 87(2)(b) running while holding onto something in his pants pocket or waistband area. PO Minier gave § 87(2)(b) numerous verbal directions to stop, but § 87(2)(b) did not stop running and turned down Union Avenue, entering § 87(2)(b). Upon observing this, PO Minier exited his patrol vehicle and pursued § 87(2)(b). Upon arriving at § 87(2)(b) PO Minier began knocking on the door. By this time additional officers were behind PO Minier, including Capt. Nunez. PO Minier stated that a black female came to the door and informed him that § 87(2)(b) had fled into her apartment on the second floor. The black female pointed up to the second floor and they walked up to the second floor together. PO Minier and the officers entered this common area inside of § 87(2)(b) and stood outside of § 87(2)(b)'s apartment. PO Minier requested that she have § 87(2)(b) step out and he did. PO Minier stated that other officers who were present handcuffed § 87(2)(b). PO Minier spoke to § 87(2)(b) and informed her that they were investigating an incident involving shots fired and asked if they could search her apartment for a firearm to determine if § 87(2)(b) hid a firearm in her home. PO Minier stated that § 87(2)(b) pointed to a back bedroom where § 87(2)(b) had run into when he entered her apartment. PO Minier stated that § 87(2)(b) verbally consented to his and the officers entry to search for a firearm. Ultimately a firearm was not recovered and the officers left the location. Sgt. Chen (encl. 8d-f), Capt. Nunez (encl. 6a-c), and PO Rao (encl. 9d-f) each acknowledged being inside of the apartment, but they denied being the initial officers inside of the apartment and stated that officers were already inside of the apartment by the time they had arrived and they said that they had no knowledge of what led the officers to the specific apartment or how entry was gained. Sgt. Chen testified that he did not believe a search of the apartment was conducted and he did not see any officers conduct a search. During PO Rao's interview, he stated that he assisted in a search for a weapon by searching the living room and bedroom, including closets inside of the apartment, but he did not locate a weapon. During Capt. Nunez's interview, he stated that he

remained in the living room from where he observed officers walked out of a rear bedroom with § 87(2)(b) in handcuffs. Capt. Nunez further stated that officers searched the apartment in areas where someone could hide, looking for the male they pursued.

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation B: Abuse of Authority: Sgt. Nanhao Chen threatened to arrest § 87(2)(b)

Allegation C: Discourtesy: Sgt. Nanhao Chen spoke rudely to § 87(2)(b)

It is in dispute whether or not Sgt. Chen threatened to arrest § 87(2)(b) or used discourteous language towards her. § 87(2)(b) (encl. 5a-e) stated that as she asked to see a search warrant and asked what was going on, Sgt. Chen responded, “She will be going to Central Booking,” or “You will be going to jail.” § 87(2)(b) stated that she was screaming and crying following this, and Sgt. Chen allegedly told her to, “Shut up,” and “Shut the fuck up.” Sgt. Chen then told PO Minier to either arrest her or place her in handcuffs, after which she was handcuffed and placed in the living room. During § 87(2)(b)’s telephone statement, he stated that he heard § 87(2)(b) screaming to see the search warrant and he heard officers tell § 87(2)(b) to “Shut the fuck up” (encl. 4a).

During Sgt. Chen’s CCRB interview (encl. 8d-f), he stated that he recalled standing in the living room and acknowledged that there were several females inside of the apartment, but he did not recall any specific interaction with any of them. Further, Sgt. Chen denied telling anyone to “shut the fuck up,” or telling anyone that they will be going to jail or to Central Booking. Similarly, Capt. Nunez (encl. 6a-c), PO Rao (encl. 9d-f), and PO Minier (encl. 7d-f) corroborated that no officer told anyone that they were going to jail or to Central Booking, or told anyone to “Shut the fuck up.”

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation D: Abuse of Authority: Capt. Osvaldo Nunez interfered with § 87(2)(b) and § 87(2)(b)’s ability to photograph an incident.

Allegation E: Abuse of Authority: Capt. Osvaldo Nunez threatened to arrest § 87(2)(b) and § 87(2)(b)

It is in dispute whether Capt. Nunez threatened to arrest § 87(2)(b) and § 87(2)(b) and whether he interfered with their ability to record the incident. According to § 87(2)(b) (encl. 5a-e), § 87(2)(b) and § 87(2)(b) were standing by the entrance of the apartment taking photographs of the officers inside of the apartment and the front door to § 87(2)(b)’s apartment. § 87(2)(b) alleged that Capt. Nunez told § 87(2)(b) and § 87(2)(b) to stop taking photographs or that he was going to arrest them. § 87(2)(b) made no mention of this during his telephone statement (encl. 4a) and neither § 87(2)(b) nor § 87(2)(b) cooperated with the investigation.

During Capt. Nunez’s CCRB interview (encl. 6a-c), he stated that he did not recall seeing any female or any person taking photographs inside of the location and denied that he or any officer told anyone in the apartment to stop taking photographs or that they would get arrested.

Similarly, Sgt. Chen (encl. 8d-f) and PO Rao (encl. 9d-f) corroborated this stating that they did not recall seeing anyone taking photographs and that no officer threatened to arrest anyone. During PO Minier's CCRB interview (encl. 7d-f), he stated that he recalled seeing someone, he did not know who, with their phone out, and he assumed that they were recording the incident. However, he denied that he or any officer threatened to arrest them.

Patrol Guide Procedure 208-03 states that it is lawful for individuals to videotape or photograph police incidents (encl. a-m).

§ 87(2)(g)

Allegation E: Force: PO Jorge Minier used physical force against § 87(2)(b)

It is in dispute whether PO Minier pushed § 87(2)(b) (encl. 6a-e) stated that after she was placed in handcuffs, she was seated on the floor in the living room. Following this, she observed PO Minier push § 87(2)(b) place him in handcuffs and seat him on the ground next to § 87(2)(b). While § 87(2)(b) did not state that he was pushed at the time he was handcuffed, he stated that he was pushed as officers entered the apartment and that he was handcuffed in the back bedroom for 20 seconds and then released (encl. 4a).

During PO Minier's CCRB interview (encl. 7d-f), he denied that any other individuals, aside from the male who was arrested, were placed in handcuffs and denied that any force was used against anyone. Similarly, Sgt. Chen (encl. 8d-f), Capt. Nunez (encl. 6a-c), and PO Rao (encl. 9d-f) denied that anyone else was placed in handcuffs or that force was used against anyone in the apartment.

§ 87(2)(g)

Pod: 13

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date